CHAPTER 16
SPECIAL CONTRACTING METHODS

16.1 OVERVIEW

The Department allows use of special contracting methods for Federal-aid projects, as allowed under ***Chapters 337.025 Florida Statutes (F.S.)*** and ***287.055(9) F.S.*** and ***23 USC 502***. The Department recognizes that items such as quality, delivery time, safety, life-cycle costs and use of new or improved technologies are also valuable in addition to cost alone. In 1995, the Florida Legislature authorized the Department to use the design-build process for buildings, major bridges, and rail corridor projects. In 1996, this authority was further expanded to include all project types as a part of the "innovative" practices package. Alternative contracting techniques may control time and cost increases on construction projects.

Since 1990, the FHWA has been evaluating methods for improving the efficiency of delivering transportation improvement projects under the ***Special Experimental Projects 14 Program*** (***SEP-14*** program). The ***SEP-14*** program provides State DOTs with a vehicle for evaluating various types of non-traditional contracting methods on Federal-aid highway contracts. The objective of the ***SEP-14*** program is to evaluate project specific innovative contracting practices that have the potential to reduce the life cycle costs of projects, while maintaining product quality.

Project delivery methods that have graduated or been proven under the ***SEP-14*** program become operational and are referred to in this ***Chapter*** as “Alternative Contracting Methods” (***Section 16.2***). These operational methods do not require additional FHWA approvals as delivery methods for LAP projects, rather the Department may approve their use in LAP. Methods that are still being tested or vetted and require additional approvals under the ***SEP-14*** program are referred to in this ***Chapter*** as “Innovative Contracting Methods” (***Section 16.3***).

This ***Chapter*** identifies only those alternative and innovative contracting methods allowed in LAP. For a complete listing of definitions for all types of alternative and innovative contracting methods, reference the FHWA Contract Administration Core Curriculum Manual and the FDOT Office of Construction website at: http://www.fdot.gov/construction/AltContract/AltContract.shtm.

16.2 ALTERNATIVE CONTRACTING METHODS

Alternative contracting methods are also referred to as “operational” methods by FHWA. Alternative methods are approved for use on all Federal-aid highway construction projects. LAs must receive Department concurrence for use of alternative contracting methods for LAP project delivery. FHWA’s alternative contracting website provides

sample specifications and contracting provisions for these techniques from various transportation agencies at:
https://www.fhwa.dot.gov/construction/contracts/acm/.

16.2.1 Bid Alternates

Additive or deductive bid alternates are techniques employed on a transportation project to achieve the maximum project scope within an available budget. The LA defines its critical project scope components as the "base" bid and defines specific additional components as "alternates." Priority order of additive or deductive bid alternates shall be clearly defined. The contract is awarded to the lowest responsive and responsible bidder providing the maximum scope (within the budget).

Additive alternates: As the budget allows, bid alternates are added to the base in a predefined order to establish the low bid.

Deductive alternates: To meet the budget, bid alternates are deducted from the base scope in a predefined order to result in a contract that fits the budget.

It is strongly recommended that LAs use this method to maximize their budgets and also adjust for pay item cost fluctuations on LAP projects. Per the terms of the LAP Agreement, the Department may only allocate available funds to a LA. The LA is responsible for all project costs exceeding the Department funded amount(s). Additional information on Bid Alternates may be found in ***Chapter 13*** and the ***FHWA Contract Administration Core Curriculum Manual***.

16.2.2 Cost-Plus-Time (A + B Bidding)

Cost-plus-time bidding, more commonly referred to as A + B bidding, reduces total construction cost by making time a factor, in addition to cost, when awarding a contract. A daily road user cost must be identified in the contract and will be used to calculate the low bid. Under the A + B method, each submitted bid consists of two components:

- The 'A' component is the traditional bid price for the contract items based on unit prices and quantities
- The 'B' component is the bidder's estimate of the time required to complete critical construction pay items as defined in the contract. Calendar days are typically used to reduce potential for disputes.

For the purposes of determining the apparent low bidder, the B component is converted to a dollar value by multiplying the number of days by the daily road user cost identified

in the contract. When an A + B bidding procedure is used, the contracting agency incorporates an incentive/disincentive (I/D) provision based on the "daily road user cost rate".

16.2.3 Design-Build

Design-build assigns the design and construction of a project to one firm (or team), allowing construction to begin before plans are complete. This contracting method provides a single point of contact for quality, cost, and schedule from design through completion of construction, thus generally reducing contract time, change orders, and claims due to errors and omissions. A LA that is certified to design projects and administer construction may also be LAP certified to perform design-build projects.

To accelerate certain major construction projects, the Florida Legislature allows the use of design-build contracts to accelerate the project completion schedule under ***Section 337.11(7), F.S.*** Design-build minor contracts are allowed under ***Section 337.025, F.S.*** The two categories of design-build contracts, major and minor, do not apply for LAP projects. LAP projects are simply considered as design-build projects. Federal requirements for design-build contracting are described in ***23 CFR 636***.

For LAP Classification A, B, and C projects, the LA must use ***FDOT Procedure No. 625-020-010, Design-Build Procurement and Administration*** for selecting a design-build team. LAP project concept designs must be reviewed and approved by the Department's Structures Office before procurement. The Department may at its sole discretion, reject designs which do not meet Department standards. The Department may also, in its sole discretion, allocate Department-managed resources, including structures engineers and/or project managers to projects involving complex design structures and other design structures not commonly used by the Department. In addition, all complex bridges and bridge types not commonly used by the Department constructed via the LAP delivery method will be monitored and inspected by Department personnel. In addition, the Department provides standard contract language to be used for LAP Classification A, B, and C projects at:
https://www.fdot.gov/programmanagement/Implemented/LAP/Default.shtm.

For LAP Classification D projects, the procedure used by the LA for selecting a design-build firm should be similar to the ***FDOT Procedure No. 625-020-010, Design-Build Procurement and Administration***. LAP project concept designs must be reviewed and approved by the Department's Structures Office before procurement. The Department may at its sole discretion, reject designs which do not meet Department standards. The Department may also, in its sole discretion, assign a project manager and/or structures engineer to projects involving complex design structures. Chapter 287.055(9) F.S.

governs LA design-build procedures and procurement methods allowed under Florida laws.

16.2.4 Incentive/Disincentive

I/D contracting uses incentive monies, which are paid to the contractor for early completion of a project as provided for in the contract. Disincentive monies are subtracted from the amount paid to a contractor for completing the project later than time allowed by the contract. I/D may be a stand-alone method, or may be applied to other alternative contracting techniques including No Excuse Bonus (see ***Section 16.3***), A + B Bidding, Lane Rental, Design-Build or any combination.

I/D contracts are assessed on a daily basis and are typically used to achieve specific milestones within a project to encourage timely completion of the total contract. If intermediate milestones are used, it is recommended that a milestone also be placed at the end of the project to ensure overall reduction of contract time. Bonuses must be included in the original contract award. Bonuses added to the contract after contract award are not eligible for Federal-aid participation.

16.2.5 Indefinite Quantity/Indefinite Delivery Contracting

Effective January 18, 2019, FHWA Notice 5060.2 makes ID/IQ contracting operational, which authorizes State DOTs to enter into ID/IQ delivery construction contracts without seeking a ***SEP-14*** approval when the conditions of the Federal Notice are met.

ID/IQ contract – The term "ID/IQ contract" means a type of contract that does not specify a firm quantity of supplies or services (other than a minimum or maximum quantity) and provides for the issuance of orders for the performance of tasks or delivery of supplies or services during the period of the contract. The ID/IQ contracts are also known as "push-button contracts," "on-call contracts," and "task order contracts." For the purpose of the notice, ID/IQ contract is specific to Federal-aid construction projects. It is a single award task or work order contract and is awarded by competitive bidding to the lowest responsive bidder.

Job Order Contract – The term "Job Order Contract" (JOC) for Federal-aid construction projects means a type of ID/IQ contract that utilizes a construction task catalog with pre-priced work item descriptions. Contractors bid "adjustment factors" and the contract is awarded by competitive bidding to the lowest responsive bidder determined by their mark-up rate.

State DOTs and their subrecipients are authorized to execute ID/IQ contracts when the following conditions are met:

- **Projects qualify as categorical exclusions under NEPA** – NEPA categorical exclusions are actions that meet the definition contained in ***40 CFR 1508.4***, and, based on past experience with similar actions, do not involve significant environmental impacts. See also ***23 CFR 771.117***.
- **Low-cost contract** – A low-cost contract is a short-term (1 to 2 year) base contract that is awarded to the lowest responsive bidder where the total value of task or work orders may not exceed $2,000,000 per year on average over the contract term. With FHWA approval, the base contract may be extended up to five (5) years.

Subject to the limitations of ***FHWA Notice 5060.2***, State DOTs may use ID/IQ contracting and JOC, a form of ID/IQ contracting, to perform a variety of construction work including, but not limited to:

- Preventive maintenance and bridge preventative maintenance as described in FHWA Memorandum "Guidance on Highway Preservation And Maintenance" dated February 25, 2016 and the FHWA Bridge Preservation Guide (Spring 2018)
- Construction of pedestrian facilities (including ramps)
- Intelligent transportation system (ITS) installation
- Pavement resurfacing
- Safety improvements
- Traffic control device installation
- Traffic signal installation
- Clearing for construction contracts to avoid sensitive habitat

Contact the State LP Administrator for concurrence prior to entering into an ID/IQ contract for LAP projects.

16.2.6 Lane Rental

Lane rental is a contract provision that incentivizes contractors to schedule and work during non-peak periods by charging rental fees for lane or shoulder use, with higher fees during peak periods. The lane rental fee is based on the estimated cost of delay or inconvenience to the road user during the rental period. The fee is assessed for the time that the contractor occupies or obstructs part of the roadway and is deducted from the monthly progress payments.

The rental fee rates are stated in the bidding proposal in dollars per lane per time period, which could be daily, hourly, or fractions of an hour. Neither the contractor nor the contracting agency estimate the anticipated amount of time for which the assessment will apply, and the low bid is determined solely on the lowest amount bid for the contract items. All lane closures shall be documented on the ***Lane Rental Form No. 700-050-57*** for LAP Classification A, B, and C projects.

16.2.7 Lump Sum Bidding

Lump sum bidding requires the contractor to provide a lump sum price to complete a project as opposed to bidding on individual pay items with identified quantities. The benefits include reductions in quantity overruns and in paperwork associated with quantity measurement and verification.

The Department has used this method for Federal-aid projects including resurfacing, bike path construction, box culvert extensions, or minor bridge widening. Lump sum guidelines are published in the FDOT Design Manual and the method is allowed under ***Section 337.11 F.S.***

16.2.8 Warranty

NHS project warranties: All warranties proposed on NHS projects must be pre-approved by the FHWA, Florida Division Office prior to advertising and awarding the construction contract. Product warranties (as offered by manufacturers) are allowed and are not applicable to this guidance.

FHWA provides specific warranty guidance applicable to all Federal-aid highway construction projects on the NHS in ***23 CFR 635.413***. FHWA's policy against use of warranties on Federal-aid construction projects was based on the logic that participation in a warranty payment constituted indirect participation in routine maintenance. Maintenance costs are not eligible participating costs on Federal-aid projects. Updated guidance received from the FHWA in 2015 now allows warranty provisions for specific highway construction products or features in Federal-aid contracts on the NHS. General warranties for the entire project are **not** acceptable unless the project in question is delivered by a design-builder per ***23 CFR 635.413(e)***.

General rules of thumb for NHS project warranties include:

- A warranty may not cover any item ineligible for Federal-aid participation.
- A warranty may not cover damage caused by others.

- A warranty may not cover routine maintenance.
- A warranty may cover preventative maintenance as defined in the October 8, 2004 FHWA memorandum on "***Preventative Maintenance Eligibility.***"
- Contractors cannot be required to warrant items over which they have no control.
- Length of warranty is dependent on the surety's willingness to underwrite the warranty. Five years is a general maximum.

SHS project warranties are regulated by the ***FDOT Standard Specifications*** and the ***FDOT CPAM***. Warranty provisions must be approved by the Department for use on all LAP projects located on the SHS.

Local roadway warranties are subject to the LA policy. Federal-aid participation is not allowed for warranty bonds, and a separate pay item may be added to the project estimate in order to isolate cost(s) associated with the warranty.

16.3 INNOVATIVE CONTRACTING METHODS

The Department's innovative contracting methods are authorized under ***Section 337.025, F.S.*** The allowed methods applicable to LAP are those experimental methods also allowed by FHWA under the ***SEP-14 program***. The ***SEP-14*** program strives to identify, evaluate, and document innovative contracting practices that have the potential to reduce life cycle cost of projects while maintaining product quality. The use of an experimental method on a Federal-aid highway construction project requires prior approval of the ***SEP-14*** program workplan by ***FHWA's Office of Innovative Program Delivery***.

In some cases, the methods listed here are not categorized the same by the FHWA and FDOT and additional approvals may be required by one or both agencies for LAP projects. Always confirm with your District LP Administrator prior to employing any of these methods for local project delivery.

16.3.1 Construction Manager at Risk

Construction Manager at Risk or CM@Risk contracting is described as an integrated team approach applying modern management techniques to the planning, design, and construction of a project. These techniques help to control time and cost, and to assure quality for the project owner. FHWA refers to this method as Construction Manager/General Contractor (CM/GC) and the Florida Division Office must pre-approve this method for use on LAP projects. ***Section 1303 of MAP-21*** made CM/GC operational on October 1, 2012, but FHWA is still formulating policy directives to fully implement

CM/GC. This is an authorized procurement method by the Department under ***s. 337.025, F.S.***
The contract is awarded to a team consisting of the owner, the architect/engineer, and the construction manager (CM). CM@Risk includes pre-construction and construction services, allowing the CM to provide direct input on construction decisions, project phasing, risk allocation, and innovations. The following are types of projects that can benefit from CM@Risk:

- Building type projects where construction methods and specifications vary between professional groups (i.e. engineer/architect and constructions trades).
- Innovative funding scenarios, where multiple owners may dictate final project criteria.
- Projects where limiting budgets threaten the delivery of the project and where the CM alternative can help maintain costs.
- Major projects that are technically complex or have challenging schedules.
- Lengthy Corridor Projects.
- Bridge Rehabilitation (Bascule).

A LA shall develop procedures for the CM@Risk delivery method subject to review and acceptance by both the Department's Central Office and FHWA. The District LP Administrator coordinates reviews with the LA, Central Office, and FHWA.

16.3.2 No Excuse Incentive/Bonus

The contractor is given a "drop-dead date" for completion of a phase or project and receives a bonus for meeting that completion date. No excuses are accepted for delays in meeting that date. Other than the bonus date, normal contract administration procedures are followed. This method is recommended for projects where the LA desires project completion by a specific date.

16.4 DISALLOWED CONTRACTING METHODS

Currently, Bid Averaging and Reverse Auction methods are not allowed on Federal-aid highway construction projects. LAs may direct all questions or requests for clarifications to the District LP Administrator or to the State LP Administrator in the Central Office of Program Management.

16.5 RESOURCES

FHWA Contract Administration Core Curriculum Manual

FDOT Office of Construction website:

http://www.fdot.gov/construction/AltContract/AltContract.shtm

FHWA's alternative contracting website:

https://www.fhwa.dot.gov/construction/contracts/acm/

FDOT Procedure No. 625-020-010, Design-Build Procurement and Administration

LAP Classification A, B, and C projects required contract language:

http://www.fdot.gov/programmanagement/Implemented/LAP/Default.shtm.

FDOT Standard Specifications Book

FDOT Construction Project Administration Manual (CPAM) ***(Topic No. 700-000-000)***

FDOT Design Manual ***(Topic No. 625-000-007)***